

**Chippewa Motor Freight, Inc. and Action Carrier, Inc. and Truck Drivers, Chauffeurs & Helpers Local Union No. 100, an affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 9-CA-15508**

April 29, 1982

## DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING AND HUNTER

On August 25, 1981, Administrative Law Judge Almira Abbot Stevenson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt her recommended Order.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed.

<sup>1</sup> No exceptions were filed to the Administrative Law Judge's dismissal of the allegation that Respondent violated Sec. 8(a)(5) of the Act by failing to bargain about the decision to close its Cincinnati facility.

## DECISION

### STATEMENT OF THE CASE

ALMIRA ABBOT STEVENSON, Administrative Law Judge: This case was heard in Cincinnati, Ohio, on May 13 and 14, 1981. The charge was served on the Respondents, on June 27, 1980. The complaint was issued on September 29, 1980, and duly answered. The answer was amended at the hearing.

The issues are (1) whether or not Respondent Action Carrier, Inc. (Action herein), is the *alter ego* of and/or a single employer with Respondent Chippewa Motor Freight, Inc. (Chippewa herein); (2) whether or not the Respondents violated Section 8(a)(5) of the National Labor Relations Act by closing the Chippewa terminal in Cincinnati and thereafter performing the work with Action employees, without giving prior notice to the Charging Party Union and affording it an opportunity to bargain with respect to such conduct and the effects of

such conduct on the Chippewa terminal employees, and by refusing to apply the terms of Chippewa's collective-bargaining agreement with the Charging Party Union to the Action employees now performing the work.<sup>1</sup> For the reasons given below I find that the complaint should be dismissed.

Upon the entire record, my observation of the demeanor of the witnesses, and the briefs filed by the General Counsel and the Respondents, I make the following:

### FINDINGS OF FACT<sup>2</sup> AND CONCLUSIONS OF LAW

#### I. ALLEGED ALTER EGO AND/OR SINGLE EMPLOYER STATUS

##### A. Facts

##### 1. Chippewa

Chippewa was a regular-route general commodity carrier transporting freight by truck throughout the Midwest under authority issued by the Interstate Commerce Commission. In September 1978, Chippewa was acquired by Lewis Industries, Inc., a holding company incorporated in South Dakota owned by H. Lauren Lewis (Lewis herein), with 20 percent of the stock, and his sons, David Lewis, with 60 percent, and Allan Lewis, with 20 percent. Lewis was chairman of the board and Davis Lewis was president. The senior vice president and treasurer (comptroller) was Albert R. Schelske, the vice president—sales was John Farrah, and the secretary, Jeanette Erikson. John Sweere was labor relations supervisor. Overall operational responsibility was shared by Chairman of the Board Lewis and President David Lewis. The home office of Chippewa was in Sioux Falls, South Dakota, where it employed 80 people, including a director of safety, a credit manager, a director of office systems, a director of licensing and purchasing, a personnel director, and rate clerks, and maintained a claims department.

Under its authority from the ICC as a regular-route carrier, Chippewa was authorized to transport a wide variety of commodities over specifically designated highways between designated points where it owned or leased 17 terminals in 8 Midwestern States and within the metropolitan areas of those terminals. For its freight carriage, Chippewa operated over 800 trailers and tractors, and employed approximately 600 employees in the classifications of terminal manager, dispatchers, salesmen, office clerical employees, pick-up-and-delivery drivers, line-haul drivers, dockmen, spotters, mechanics, tiremen, construction employees, stockroom-partsmen, and janitors.

<sup>1</sup> No issue is presented on jurisdiction or labor organization status. Based on the allegations of the complaint and admissions in the answer, I find that at material times the Respondents were employers engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, and the Charging Party Union is a labor organization within Sec. 2(5) of the Act.

<sup>2</sup> Most of the facts are not in significant dispute, and there are few, if any, inconsistencies. Variations and ambiguities have been resolved, where possible, on the basis of the probabilities in light of the record as a whole.

The bulk of Chippewa's operations involved carrying LTL (lighter-than-truckload) shipments of dry freight averaging 680 pounds each for thousands of customers. The shipments were sorted at the terminals and then loaded on trailers for the long-haul along specified highways to other terminals of Chippewa where they were unloaded and resorted for delivery within a metropolitan area, further long haul to another Chippewa terminal, or, if destined for points outside Chippewa's authorized area, transfer to a carrier with authority to deliver within the area of destination.

In the spring of 1979, Chippewa accepted an offer to haul swinging fresh meat from John Morrell and Company from its plant in Sioux Falls, South Dakota,<sup>3</sup> to Cincinnati. Chippewa owned or leased refrigerated trailers but it had no sleeper tractors suitable for such a long haul and it employed no drivers in Sioux Falls who were available for this business. Chippewa therefore obtained owner-operators with sleeper tractors on 18-month leases to haul its trailers. Chippewa paid the owner-operators on a percentage-of-revenue basis. Hauls were initiated by a call from John Morrell and Company to the Chippewa Sioux Falls dispatcher, who notified the owner-operators. At first, the owner-operators were required to follow Chippewa's regular routes from Sioux Falls to Minneapolis-St. Paul and from there to Cincinnati. Very quickly, however, Chippewa applied for and obtained authority to move these loads by the shortest distance over an alternate direct route south of Chicago. In April 1979, a meeting was held by the Cincinnati terminal manager with officials of the Charging Party Union which represented the Cincinnati employees of Chippewa, and it was agreed that the owner-operators would deliver meat directly to its destination and then bring their trailers into the Cincinnati terminal where its employees would unhook them and then hook up trailer loads or LTLs of dry freight for them to pull out with their sleeper tractors on their return to Sioux Falls. At Lewis' suggestion, the owner-operators became members of Teamsters Local 147, Des Moines, Iowa, and on September 12, 1979, Chippewa executed an agreement covering them under the Teamsters National Freight Agreement, Central States Area, which covered most of Chippewa's other employees.

Chippewa was operating on close to a break-even basis when Lewis Industries, Inc., acquired it. During the year 1979, its revenues amounted to some \$25 million but costs exceeded revenues by 6 percent. To raise funds for continued operations, loans of \$7 million were obtained which Lewis guaranteed personally. In late December 1979, Lewis sought out officials of the Teamsters International and Locals (not including the Charging Party Union) representing some of the Chippewa employees, and requested adjustments in contract rules and benefits to enable the Company to improve its financial situation. All such requests were denied, and then International Vice President Roy Williams advised Lewis to "get out of business." Lewis responded that he had not given up hope yet.

<sup>3</sup> References to Morrell operations in Sioux Falls include meatpacking plants in that city and in Estherville, South Dakota.

In January 1980, the Company lost \$233,000. In February it lost \$401,000. Three terminals, in Dayton, Ohio, and Newcastle and Kokomo, Indiana, were closed because of operating losses there. Although David Lewis issued a memo to employees in early March predicting a bright future for the Company, the Company continued to show a loss throughout the month of March, and Lewis decided, in view of the unavailability of further credit and the uncertain effects of the possible deregulation of the industry, to close the Company down. On March 28, 1980, the remaining terminals were closed and most of the employees were laid off. Thereafter the terminals, tractors, trailers, furniture, and equipment were sold or their leases given up. On December 29, 1980, Lewis Industries, Inc., was liquidated. On March 23, 1981, Chippewa filed a petition in bankruptcy and all officers and directors resigned. Chippewa's ICC certificates of authority, which Lewis testified were rendered worthless by the Motor Carrier Act of 1980 passed by Congress on July 1, 1980, have been sold.

The only business which Chippewa continued was an intrastate shuttle hauling Uniroyal tires from that Company's manufacturing plant to its warehouse in Eau Claire, Wisconsin. Under agreement with their Local of the Teamsters Union, approximately seven drivers were retained for this purpose and were also dispatched to Cincinnati and other terminals to bring trailers to central points for auction. The Uniroyal shuttle is now being operated by the referee in bankruptcy.

## 2. Action Carrier

In the late fall of 1979, management officials of John Morrell and Company requested Lewis to provide service as an irregular-route carrier from Sioux Falls to several States, including Michigan, Indiana, and Ohio. After discussing the request with David Lewis and A. R. Schelske, president and comptroller respectively of Chippewa, Lewis decided to create a new company for this purpose. Lewis prepared incorporation documents for Action (as he had for Chippewa). He created the name Action Carrier, Inc., and on November 27, 1979, incorporated the new Company under the laws of South Dakota. Lewis provided the initial capital and owned all the stock. On December 5, 1979, Lewis was elected chairman of the board and secretary; David Lewis was elected president; Allan Lewis, vice president; John Farrah, vice president—sales; and A. R. Schelske, treasurer. Two years later, in 1981, David Lewis bought 600 shares of stock, but Lewis, with 1,600 shares, was, and apparently remains, the chief executive officer. Lewis and David Lewis together established wage rates for the Action employees. Allan Lewis took no part in running either Chippewa or Action. Schelske performed the same duties for both companies. John Farrah's title was the same for both Companies but his duties were quite different. At Chippewa he supervised a staff of 30 salesmen located at its various terminals. At Action he is the entire

sales force, personally soliciting volume traffic throughout the United States.<sup>4</sup>

On December 15, 1979, Action applied to ICC for, and on January 11, 1980, obtained, emergency temporary authority as an irregular-route carrier to haul meat and related products from the John Morrell and Company, Sioux Falls, South Dakota, meatpacking plant to destinations in 17 States. As an irregular-route carrier, Action was authorized to carry the commodities specified from designated point to designated point over any highways it chose. Thereafter, Action received temporary authority for this operation. Under the Motor Carrier Act of 1980 deregulating the industry, Action subsequently received permanent authority to operate as an irregular-route carrier hauling a variety of products to and from destinations throughout the United States. Virtually all Action shipments consist of truckloads averaging in weight 35,000 pounds carried directly from consignor to consignee by owner-operators, eliminating the use of carrier terminals. The trailers are sealed by the consignor and unsealed by the consignee, and the carrier has no responsibility for shortages or overages. The owner-operators deal directly with Action headquarters in Sioux Falls.

Action headquarters has been located from the beginning in the same building in Sioux Falls as Chippewa headquarters occupied, eventually taking over the lease. Because Action requires less space, it has subleased part of the premises. It began using the same Chippewa WATS number in Sioux Falls because of the expense of getting a new number. Inasmuch as all Action business and dispatching is done from this location, it subsequently added three more WATS lines.

The record shows that Action employed 21 office employees between November 1979 and May 1981, although its total complement at any one time was 10 employees. Of the 21, 9 had been employed by Chippewa, performing similar but different duties as follows:

1. Marvin Stephenson, a Chippewa dispatcher, was hired in mid-January 1980 by Action as a dispatcher with different functions. Whereas Chippewa had one or more dispatchers at every terminal and a central dispatch department at headquarters employing five people, Action has only a manager of the dispatch department plus one dispatcher and one assistant dispatcher, all of whom work in Sioux Falls.

2. Sharyl Wolf was in payroll or accounts receivable at Chippewa. After the shutdown she worked 60-90 days cleaning up paperwork. She was then hired by Action as assistant dispatcher coordinating calls over the WATS lines.

3. Kathy Page was an accounts receivable clerk for Chippewa in the backroom of its headquarters. In mid-January 1980 she was hired by Action as a billing clerk and moved up front to an office next to that of Lewis. She is now doing settlements for the owner-operators.

4. Jeannette Erikson, secretary of the corporation and personal secretary to Lewis at Chippewa, is Lewis' personal secretary at Action.

5. Jerry Lindeman was the assistant corporate secretary and the number-two accountant under Comptroller Schleske at Chippewa. He was hired by Action as an accountant but left after 2-1/2 months because the job was not big enough for him.

6. Henry Crotteau was office manager of Chippewa, whose expertise was in handling computer transmissions of daily LTL traffic between terminals. As Action does not operate on a computer basis, it hired Crotteau to set up an accounts receivable system but, as it had no further use for his services, he left Action in June 1980.

7. John Sweere was employed by Chippewa in the operations department and was in charge of simple dispatch, and he assisted in organizing sales of equipment after the shutdown. He became operations manager for Action in June 1980 but was released in the spring of 1981.

8. Jane Gerry was in bills payable at Chippewa. At Action she handles journal entries.

9. John Neumann supervised tractor maintenance throughout the Chippewa system. During the summer of 1980 he was hired by Action to perform the actual mechanical maintenance work on trailers.

Action employs no personnel director, safety director, credit manager, or director of licensing and purchasing, and does not maintain a claims department, as Chippewa did, because no such functions are needed. Action employs no rate clerks, as Chippewa did, because its applicable tariff structure is so simple that Lewis himself performs the duty of tariff agent.

Action began its operations in mid-January 1980, hauling fresh meat from Morrell and Company in South Dakota to Cincinnati and other destinations in refrigerated trailers leased by Chippewa from Trailmobile Leasing Co., assuming the Chippewa leases and mounting decals with its own logo over those of Chippewa on the trailers. In the beginning Action recruited owner-operators in the Sioux Falls area. The contract arrangements for a sleeper tractor with driver were the same as Chippewa had for its Morrell business except that Action originally paid on a mileage basis, in late 1980 switching to a percentage basis. The record appears to show that a total of 3 owner-operators with 9 or 10 sleeper tractors worked for both Chippewa and Action out of Sioux Falls. None of them still works for Action which now recruits its owner-operators in Iowa.

Action at first had ICC authority only to haul meat one way out of Sioux Falls. After delivering the meat directly to its destination, therefore, in order to retrieve its equipment Action followed the industry practice in such circumstances of trip leasing where possible; i.e., leasing its equipment to Chippewa or other carriers in the area of destination with authority to carry loads in the reverse direction, placarding the equipment to identify the lessee company.

Equipment which Action required from Chippewa after it went out of business consisted of the following:

Action assumed leases on a total of 38 refrigerated trailers which it still uses. It also assumed leases on two tractors which Lewis testified Action did not want but Chippewa could find no one else to assume. Action also

<sup>4</sup> Although Lewis and Farrah discussed hiring Bill Lode, Chippewa division sales manager, as a second salesman for Action, and Farrah had business cards printed for Lode, Action never hired him.

acquired 60 van trailers but, as they did not have enough capacity for irregular-route hauls, in October 1980 Action sold 25 of them and traded the other 35 for larger capacity trailers.

Action purchased 35 van trailers for a total price of \$198,800 and traded them in December 1980 for 35 larger capacity vans. Other miscellaneous items purchased for appraised value consisted of a damaged truck for \$2,500 used to clean snow off the yard, a pickup truck for \$3,500 and an automobile for \$3,000 used by Sioux Falls personnel, and office and salvage furniture no one else would buy at the Chippewa auction sale for \$9,500.

Including equipment subsequently acquired from other sources, Action now possesses a total of 97 trailers, and operates 60 tractors on a contract basis with owner-operators.

The record contains the following information regarding Action's financial condition:

Action lost \$270,000 during its first year of operation. It borrowed a total of \$160,200 from Chippewa during the 6-month period March to September 1980, money which Chippewa received from sales of assets. The loans are listed in Chippewa's bankruptcy application and will be paid, with interest, upon demand by the referee. Lewis attributed Action losses to the difficulty of finding trip leases with other carriers to get equipment back to South Dakota, and predicts financial improvement from the use of its broader authority from ICC to haul in both directions.

The Chippewa business shown to be acquired by Action consists of the fresh meat hauls from South Dakota to Cincinnati for John Morrell and Company. In addition, for many years Chippewa hauled beverages from St. Paul, Minnesota, to Eau Claire, Wisconsin, for National Distilleries; Action received one such haul more than a year after Chippewa closed down.

## B. Conclusions

### 1. *Alter ego*

Initially it must be said that Action is not a disguised continuance of Chippewa conceived or established for the purpose of avoiding the Chippewa collective-bargaining agreements or to run away from the unions representing its employees. Based on the facts set forth above, I find that Action was organized and established for economic reasons only and that Chippewa was closed for economic reasons unrelated to the Union.<sup>5</sup>

In such circumstances, the Board has generally found *alter ego* status only where the two enterprises in question have substantially identical ownership, management, business purpose, operation, equipment, customers, and supervision.<sup>6</sup>

Here, it is clear that Chippewa and Action had substantially identical ownership by the Lewis family, members of which exercised overall management of both companies through identical offices, along with the same

treasurer. Lower echelon management and supervision of the two Companies is dramatically different, however. Whereas Chippewa utilized a staff of headquarters directors of various functions and 60 office employees, as well as supervisory staffs employed at its 17 terminals throughout the Midwest, Action is managed and supervised solely by its officers located at its headquarters where it employs only 10 clerical workers.

Although in the broadest sense the business purpose of the Companies is the same—interstate hauling of freight—there is no similarity in the method of operation. Thus, Chippewa operated in only 8 midwestern States where it hauled primarily lighter-than-truckloads over designated routes from one to another of its 17 terminals where it employed 600 employees directly or indirectly engaged in driving, loading, unloading, sorting, reloading, and delivering cargo. By contrast, Action operates from a single location throughout the Country hauling primarily sealed truckloads direct from consignor to consignee over any route it chooses without the necessity of terminals or performing any other functions en route.

It appears that Action began its operations by taking over a minor segment of Chippewa's business, employing three of the same owner-operators, and hauling fresh meat from Morrell and Company to destinations in Cincinnati, but that, with the exception of a single subsequent job, none of the other thousands of customers of Chippewa became customers of Action.

Except for the Morrell and Company-to-Cincinnati run, Chippewa used no sleeper tractors of the kind which Action uses almost exclusively. Of 35 Chippewa's 600 tractors and trailers, only its large refrigerated trailers are found among the approximately 157 tractors and trailers operated by Action. Moreover, all the equipment and all loans which Action obtained from Chippewa were secured at fair prices and interest rates.

In these circumstances, I find that despite the fact that Action has substantially identical ownership and overall management and broad business purpose as Chippewa, its method of operation, equipment, customers, and supervision are so dissimilar that it is not the *alter ego* of Chippewa.

### 2. Single employer

The test for single-employer status is comparable to that for *alter ego* in that two legal entities comprise a single employer where there is common ownership and financial control, common management, interrelation of operations, and centralized control of labor relations, and there is an absence of an arms'-length relationship found among unintegrated companies.<sup>7</sup>

The facts discussed above show that members of the same family owned both these Companies, controlled their finances and overall labor relations, and performed top-management functions. In my opinion, however, the facts do not show an interrelation of operations charac-

<sup>5</sup> See *Tricor Products, Inc. and/or C & J Pattern Co.*, 239 NLRB 65, 68 (1978). Cf. *Parklane Hosiery Co., Inc., et al.*, 203 NLRB 597, 614 (1973).

<sup>6</sup> *Crawford Door Sales Company, Inc. and Cordes Door Company, Inc.*, 226 NLRB 1144 (1976).

<sup>7</sup> *N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Holmes*, 640 F.2d 924 (9th Cir. 1980); *N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction, et al.*, 596 F.2d 378 (9th Cir. 1979); *Sossamon Electric Company and Sossamo Building Systems, Inc.*, 241 NLRB 324, 327 (1979).

teristic of integrated companies. Thus, Action provides a countrywide long-haul, destination-to-destination, irregular-route service not offered by Chippewa. Although Action's headquarters occupies a small portion of the same premises formerly occupied by Chippewa and, for economy's sake, one of Action's four telephone numbers there is the same as Chippewa's, Action's management, supervisory, office, and driver complement make up only a fraction of Chippewa's, and the duties and responsibilities of most of them are different from the duties of comparable positions under Chippewa. The facilities and equipment operated by Action are only a fragment of those operated by Chippewa and different in significant respects. All records and accounts are entirely separate, and all of Action's dealings with Chippewa were handled on the same basis as with other, unrelated companies, at arm's length, with fare prices and interest rates.

I find therefore, that Chippewa and Action are two different business organizations owned and managed by the same family which are separately operated and engaged in activities which are substantially unrelated with each other. Chippewa and Action therefore are not a single employing enterprise and not a single employer.<sup>9</sup>

## II. ALLEGED UNFAIR LABOR PRACTICES

A. The complaint alleges, and the answer denies, that Chippewa closed its Cincinnati terminal without giving prior notice to the Charging Party Union and affording it an opportunity to bargain with respect to such conduct, and the effects of such conduct on the terminal employees, in violation of Section 8(a)(5) of the Act.

### 1. Facts

It is undisputed and I find that all city truckdrivers and warehousemen employed at the Chippewa Cincinnati terminal, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act constitute an appropriate unit; and that since on or about 1960 the Charging Party Union has been the recognized exclusive bargaining representative of the employees in the appropriate units, who have been covered by successive collective-bargaining agreements between Chippewa and the Charging Party Union, the most recent of which was effective from April 1, 1979, until March 31, 1982.

The record shows that the decision to close Chippewa Motor Freight, Inc., including its Cincinnati terminal, was made by Chairman of the Board Lewis, but it does not show when he made it except that it was when in March he saw the continuing trend of monthly losses; and that it was on Wednesday, a couple of days before the closing date, that the Company gave notice, stopped pickups, and began collecting and cataloging its assets. In any event, first notice was given to the Cincinnati employees and their bargaining representative, the Charging Party Union, on the same day, March 26, 1980, that the terminal would be closed at the end of business on

Friday, March 28, 1980.<sup>9</sup> That same day, Odell Hinkle, secretary-treasurer of the Charging Party Union and apparently the agent assigned to represent Chippewa's Cincinnati employees, telephoned Labor Relations Supervisor Sweere and "asked him what was going on"; Sweere replied that "they were closing all the terminals." Hinkle asked Sweere, "Is there anything we can talk about," or something to that effect, and told him, "We would have liked to have prior notification . . . that maybe there was something that we could have worked out." Hinkle could not recall what else was said.

Grievances were filed on behalf of the Cincinnati terminal employees covering the layoffs, complaining that brokers (owner-operators) of Action were "running Chippewa's rights" and asking to be paid for loading and unloading done by the brokers in Cincinnati, and asking Chippewa "to pay health and welfare and pension for all weeks for which they received vacation pay;" that Eau Claire drivers were performing Cincinnati employees' work and requesting that senior drivers on the Cincinnati seniority list be paid for that work; and that Action was using nonunion personnel to perform work that was formerly performed by Chippewa employees who are members of the Union. The grievances were discussed at a meeting in April at the union hall of the Motor Carrier Labor Advisory Council attended by the chairman of the Council, Sweere, Hinkle, and several of the former Cincinnati drivers. At that meeting there was a discussion of the sudden cessation of business "without notifying the employees, or without due regard to the effect of the closing," and questions were asked about the Company's future and its intentions, to which Sweere gave answers, saying that Lewis owned both Chippewa and Action but "there was no connection" between the two Companies; and, with regard to the closing of Chippewa, "They had a decision to make and they made it." Hinkle asked Sweere if there was anything the Local Union could do to postpone the closing and come up with a solution as to what the problems were and why they were closing, to which Sweere replied, "No, it is too late." The Union also suggested retaining the top seniority man to move some of Chippewa's equipment, but that proposal was rejected by Sweere. The Council deadlocked on the grievances and referred them to the next step, the MCLAC in Columbus. On April 14 Hinkle wired a demand that Sweere attend a meeting in Columbus that week, apparently on the grievances, "to discuss Chippewa's plans for going out of business and operations of Action Carriers [sic]." Sweere declined because the notice was too short.

Hinkle testified that he met with Sweere "at least three times" and had "dozens" of telephone conversations with him "about the Cincinnati situation." The Union made several proposals relating to the drivers, including one that Chippewa sign a special contract with the Union giving the drivers an opportunity to work for Action

<sup>9</sup> See *Western Union Corporation; et al.*, 224 NLRB 274 (1976); *Frank N. Smith Associates, Inc. and Kevak Construction Corporation*, 194 NLRB 212 (1971); *Gerace Construction, Inc. and Helger Construction Company*, 193 NLRB 645 (1971).

<sup>9</sup> The record shows that a telegram from Chippewa giving notice of the shutdown, addressed to Teamsters Local 100, attention Jack O'Bannon, a business agent, was delivered to the Union on March 26, 1980. I find that this constituted notice to the Union even though the telegram was not brought to the attention of Odell Hinkle, apparently the business agent assigned to represent Chippewa's Cincinnati employees.

and another that they be allowed to bid on the seven Uniroyal shuttle jobs in Eau Claire, Wisconsin. Sweere rejected the former, and agreed to the latter if the Union could "work it out" with the Teamsters Local which represented the Eau Claire drivers. Hinkle added that "[T]here was [sic] a lot of things considered after March 26th" in his discussions with Sweere. Each made suggestions but the Company never accepted any of the Union's proposals and the discussions "just didn't work out."

The grievances were taken up by the Motor Carrier Labor Advisory Council in Columbus on August 11, 1980, where they were denied. Sometime after April 14, Chippewa filed a "Request for Change of Operations" with the Joint Union Management Committee in Chicago, as required by the collective-bargaining agreement, concerning its cessation of business except for the Eau Claire shuttle operation; the Committee approved the change at a meeting in September.

## 2. Conclusions

Whether the closing of the Cincinnati terminal be considered a partial shutdown or complete shutdown (and in my opinion the shutdown of all but a single intrastate operation in Eau Claire, Wisconsin, the Uniroyal shuttle, amounts to a substantially complete discontinuance of Chippewa), the law now appears to be settled that Respondent Chippewa had no duty to bargain about the decision to close.<sup>10</sup> I conclude, therefore, that this allegation of the complaint must be dismissed.

It is equally settled that in either case, the Respondent Chippewa owed a legal obligation to bargain with the Charging Party Union over the effects on the employees of its decision to close the terminal.<sup>11</sup> The United States Supreme Court has described this obligation as follows:<sup>12</sup>

[t]he union must be given a significant opportunity to bargain about these matters of job security as part of the "effects" bargaining mandated by Sec. 8(a)(5). . . . And, under Sec. 8(a)(5), bargaining over the effects of a decision must be conducted in a meaningful manner and at a meaningful time

...

In my opinion, the General Counsel did not prove that Respondent Chippewa failed to fulfill this obligation. Thus, there is no evidence that Respondent Chippewa refused to meet with the Charging Party Union at reasonable times and confer in good faith concerning the effects of the closing. Although Labor Relations Supervisor Sweere declined one summons to meet on the grievances, on the reasonable ground of inadequate notice, he attended the rescheduled meeting and all other meetings with the Union to which he was invited, as far as the record shows. Indeed, the record shows that Sweere met with the Union "at least three times" and had "dozens"

of telephone conversations with its business agent, that proposals were exchanged, and that "a lot of things [were] considered" by the parties. Good-faith bargaining requires no more.

In all the circumstances of this case I cannot agree with the General Counsel that Respondent Chippewa failed to give the Union a significant opportunity to bargain to the extent that he implies that 2 days' notice in advance of the actual shutdown was not "a meaningful time." Surely, if Respondent Chippewa was not required to bargain about the decision to close, it was not required to give notice before the decision was made, particularly where, as here, the shutdown was not motivated by antiunion considerations, there is no persuasive evidence of an intent to deceive, and the record does not show that the decision to close was made substantially in advance of the notice. Thus, it was clear that the Company was in trouble throughout 1979, so much so that Lewis solicited the influence of Teamsters officials in obtaining reductions in his labor costs to improve his profit situation. But when this effort failed, Lewis rejected the harsh advice "to get out of business" because he was "going to try every way I can to keep going." And he persisted in this attempt throughout the months of January and February 1980 despite his continuing losses. Lewis testified, and I have no reason not to believe him, that he "was still hoping" until the weekly figures from March revealed more bad news, and then, he said, "I made the decision that we couldn't go any further." When asked why the Company did not warn the employees about the deteriorating situation in February but on the contrary encouraged them through President David Lewis' March 7 letter, Lewis testified:

If you don't hold out any hope at all, everything just goes to pot, it's just gone, the customers say is the company going to make it and then the individual who contacts the customer says, it doesn't look like it to me or it doesn't look good, then the shipper starts looking around for somebody else to ship, and then you really go down.

It becomes a self-fulfilling prophecy.

Therefore, as there is no union animus, or evidence that the decision was made in advance of the date notice was given and concealed from the Union, I cannot find that the notice was not timely or that the opportunity to bargain over the effects was not adequate.

Accordingly, I find that this allegation is not established by a preponderance of the evidence, and I conclude that it should be dismissed.<sup>13</sup>

B. The complaint alleges, and the answer denies, that Respondent Action violated Section 8(a)(5) by performing the work of the Cincinnati terminal employees with employees of Action and refusing to apply the terms of

<sup>10</sup> *First National Maintenance Corp. v. N.L.R.B.*, 452 U.S. 666 (1981); *Whitehall Packing Company, Inc. and W.P.C., Ltd.*, 257 NLRB 193 (1981); *Merryweather Optical Company*, 240 NLRB 1213 (1979).

<sup>11</sup> *Id.*

<sup>12</sup> *First National Maintenance Corp. v. N.L.R.B.*, *supra* at 681-682. This obligation is unaffected by the fact that Chippewa is in bankruptcy. *Burgenmeyer Bros., Inc.*, 254 NLRB 1027 (1981).

<sup>13</sup> To the extent that *Brockway Motor Trucks, Division of Mack Truck Inc.*, 251 NLRB 29 (1980), *Universal Security Instruments, Inc.*, 250 NLRB 661 (1980), and *ABC Trans-National Transport, Inc.*, 247 NLRB 240 (1980), relied on by the General Counsel, has not been superseded by the Supreme Court's decision in *First National Maintenance Corporation v. N.L.R.B.*, *supra*, they deal with issues not present in this case.

Chippewa's collective-bargaining agreement with the Charging Party Union to the employees now performing the work. This allegation is not sustained.

(1) As I have found Action not to be an *alter ego* of or a single employer with Chippewa, they are separate employers, neither owing any obligation to the employees of the other.

(2) Action employees are not performing work previously performed by the Cincinnati terminal employees of Chippewa.

(3) The Charging Party Union has never demanded that Action recognize it or apply the terms of its collective-bargaining agreement to Action's employees of whom the Charging Party Union is not, in any event, the exclusive bargaining representative in an appropriate unit.

Accordingly, I recommend that this allegation be dismissed.

Upon the foregoing findings of fact, and conclusions of law and the entire record, I hereby issue the following recommended:

ORDER<sup>14</sup>

The complaint is dismissed entirely.

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<sup>14</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.